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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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United Arab Emirates (UAE): Address concerns of the UN Special Rapporteur on the independence of judges and lawyers

At its 29th session, the UN Human Rights Council (HRC) will consider the report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul on her visit to the United Arab Emirates (UAE) from 28 January to 5 February 2014.[1]

Amnesty International welcomed the Special Rapporteur's preliminary findings when they were published on 5 February 2014 and commends her efforts in positively engaging the UAE authorities and civil society. This statement supplements those findings, while taking account of the response of the UAE government to the Special Rapporteur's draft report to the HRC, which had not been published at the time of writing.

In November 2012, the UAE was elected to serve a three-year term as a member of the HRC after the government pledged to introduce legal and other reforms to promote and protect human rights in accordance with international standards. Far from living up to these pledges, the UAE authorities embarked on a ruthless and unprecedented crackdown on freedom of expression and association. Today, scores of people have faced ill-treatment and tens languish in prison in prison following unfair trials, including prisoners of conscience.

Amnesty International notes the following concerns:

REPRISALS

The UAE authorities failed to respect the agreed terms of reference for the Special Rapporteur's visit, which included a guarantee that persons in contact with the Special Rapporteur in relation to her mandate would not suffer harassment or punishment or be subject to judicial proceedings for that contact. Twitter activist Osama al-Najjar, who met the Special Rapporteur during her visit, was arrested a month later and taken to a secret detention facility where he was tortured, denied access to a lawyer, and questioned about their meeting. In November 2014, he was convicted following an unfair trial before the State Security Chamber of the Federal Supreme Court (FSC), and sentenced to three years imprisonment and a fine. His charges included "contacting foreign organizations and presenting inaccurate information" about the detention and unfair mass trial of 94 activists in 2013, including his father.

VAGUE AND BROAD DEFINTION OF CRIMINAL OFFENCES

According to the response of the UAE government to the draft report of the Special Rapporteur, her report expresses concern at the vague and broad definition of criminal offences in the August 2014 Federal Law on Combating Terrorism Crimes, flouting the principle of legality, which imposes an obligation on states to define criminal offences precisely within the law.

Amnesty International shares this concern. Not only do some provisions in UAE laws severely restrict rights, they also equip the authorities with powers to criminalize freedom of expression and association and to restrict the effective enjoyment of these rights, especially by those expressing critical views about government practices.

Article 14 of the Federal Law on Combating Terrorism Crimes punishes with death or life imprisonment "*whoever commits an action or inaction intended... [to prevent] one of the State's institutions or the public authorities from practicing their activities, or prejudicing the national unity or the social security.*"

Article 15 imposes "temporary imprisonment" *on "whoever declares, by any means of communication, his opposition to the State, or to the ruling system therein or his non-allegiance to its leadership.*"

[1] A/HRC/29/26/Add.2

Article 180 of the Penal Code can criminalize peaceful criticism of the government or activities by associations, organizations, or groups that are remotely political. This provision was used to prosecute the 94 activists in the 2013 mass trial.

These and many other similarly vague provisions in UAE law may be used to sentence human rights defenders or peaceful critics of the government to lengthy prison terms or even death.

ENFORCED DISAPPEARANCE, TORTURE AND OTHER ILL-TREATMENT

The Special Rapporteur noted in her preliminary observations that in state security cases, individuals are often kept incommunicado for weeks or months in secret detention facilities. She received evidence that in many of these cases, detainees are tortured or ill-treated or both.

Amnesty International has also received testimonies and documented dozens of cases where the country's state security apparatus has subjected UAE nationals, including human rights activists, lawyers, and academics, as well as foreign nationals, to enforced disappearance and torture and other ill-treatment. The security authorities deny such detainees in their custody any access to the outside world. They have been allowed to continue these practices with impunity. These practices flout requirements of international law, as well as some safeguards in UAE law.

Defendants have described a range of methods of torture they have faced in secret detention including sleep deprivation, being hung upside down and being forced to sit in an electric chair. There are also many other methods.

The Special Rapporteur recommended that the authorities establish an independent committee of experts to investigate all claims of torture and other ill-treatment. Amnesty International fully concurs with this recommendation.

The government continues to deny the prevalence of torture and other ill-treatment. It has not implemented the Special Rapporteur's recommendation.

DUE PROCESS AND UNFAIR TRIAL

Amnesty International shares these concerns expressed by the Special Rapporteur that the authorities who arrest people on alleged state security crimes almost systematically violate due process and international fair trial guarantees. She noted serious procedural violations from the moment of arrest, usually carried out without a warrant, until the end of trial

The organization has reported on many cases where the government has imprisoned activists, critics of the government, and others charged with state security offences, following unfair trials before the State Security Chamber of the FSC. Defendants in these cases are generally arrested without judicial warrants; accorded limited or no access to lawyers throughout their pre-trial detention and sometimes even at trial. Some, when brought to trial, have told the court they were forced under torture to sign statements they were not permitted to read. These were then presented to the court as their "confessions." The State Security Chamber of the FSC has admitted these "confessions" as evidence of defendants' guilt, despite defendants' complaints and has failed to investigate allegations that they were extracted under torture.

The State Security Chamber of the FSC is a court of first instance, yet its judgements cannot be appealed. Article 230 of the Criminal Procedure Law provides a right of appeal only for judgements rendered by ordinary criminal courts of first degree, not the State Security Chamber of the FSC. Article 101 of the Constitution and Article 67 of the Law Concerning the Federal Supreme Court declare that its judgements are final.

The Special Rapporteur urged the government to revise all legislation to ensure the right of appeal in cases currently heard in the first instance before this court. In its response to the Special Rapporteur's draft report, the government said it is considering amending its laws to allow for rulings of the State Security Chamber to be challenged.

Amnesty International reminds the UAE government of similar commitments it has previously made and urges it to implement this recommendation.

RECOMMENDATIONS

Amnesty International urges the UAE authorities to address the concerns of the Special Rapporteur and to implement the following recommendations from the organization, as well as those outlined in her report:

- Immediately and unconditionally release all prisoners of conscience, those imprisoned solely for the peaceful exercise of their rights to freedom of expression, association or assembly or other legitimate exercise of their human rights;
- Ensure a narrow and clear definition of internationally recognizable offences; in particular amend the overly broad provisions in all legislation that criminalizes the peaceful exercise of freedom of expression, association or assembly;
- Prohibit secret detention and enforced disappearance; institute safeguards against torture and other ill-treatment, end the isolation in which these abuses occur, and establish institutional responsibility for the welfare of detainees and prisoners;
- Ensure in law and practice that no one is coerced through torture or ill-treatment into testifying against themselves or others, or to confess guilt and that no coerced "confessions" are accepted as evidence in court, except against a person accused of torture or other ill-treatment as evidence that the "confession" or other statement was made;
- Establish an independent committee of experts to investigate claims of torture and other ill-treatment of persons in detention. Where sufficient admissible evidence is found, those suspected of such actions must be brought to justice in proceedings that adhere to international fair trial standards;
- Revise all relevant legislation to ensure the right of appeal, including in cases currently heard in the first instance by the State Security Chamber of the FSC;
- Ensure that human rights defenders are able to carry out their peaceful activities without fear of harassment and reprisals by the government; ensure that they are fully protected in accordance with the UN Declaration on Human Rights Defenders and that the principles contained in the Declaration are fully incorporated into national law; and
- Ratify the International Covenant on Civil and Political Rights and its Optional Protocols and the International Convention for the Protection of all Persons from Enforced Disappearance.